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July 20, 2010

Jeff S. Jordan
Supervisory Attorney
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MURs 6295 and 6307 – Response for Lowden for Senate

Dear Mr. Jordan:

On Behalf of Sue Lowden, Sue Lowden for US Senate, and Bob Beers, Treasurer (collectively "Lowden for Senate"), this letter is submitted in response to two complaints filed by the Nevada State Democratic Party ("NSDP") in the closing days of the Republican US Senate primary to determine the Republican candidate to take on vulnerable Democrat Leader Sen. Harry Reid. The first complaint, filed regarding Lowden for Senate's lease of an RV, has been captioned MUR 6295, and the second complaint, regarding the alleged use of reserved general election funds in the primary election, is captioned MUR 6307. Both MURs 6295 and 6307 are transparent and frivolous political attacks based upon erroneous news reporting, and should be promptly dismissed.

I. MUR 6295

This Complaint provides no evidence whatsoever of a violation of the Federal Election Campaign Act of 1972, as amended ("Act" or "FECA") and instead just recites the law regarding permissible in-kind contributions, while drawing an adverse inference from Mrs. Lowden's misstatement that an RV had been donated to Lowden for Senate. An RV was, of course, not "donated" to Lowden for Senate; Mrs. Lowden was simply using rhetorical short-hand for what she should have meticulously described as in-kind contributions of partial fair-market value lease payments by Lowden for Senate to the owners of the RV, Carl Giudici.

Facts

Carl and Elaine Giudici ("Giudici") owned a 2001 Monaco Executive Motor Home ("the RV") that they offered to allow Lowden for Senate to use for campaign purposes. On January 12, 2010, this arrangement was formalized with a Recreational Vehicle Lease Agreement

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between Mr. Giudici and Sue Lowden for US Senate. See Attachment A. This private lease agreement between Giudici and Lowden for Senate makes clear that "Lessee further agrees that it does not acquire any legal or Home Lease equitable interest in the Vehicle but shall merely have the possessory right to use and operate the Vehicle, which possessory right shall be forfeited upon the termination or expiration of this Agreement in accordance with the terms hereof." Attachment A, Page 1 ("Ownership of Vehicle"). The rental value specified in the lease was \$95.00 per day, *id.*, which is fair market value for a similar year and model of RV. The *Las Vegas Review Journal* investigated the fair market value rental rate for a "similar new luxury RV" and determined that the rate ranges from \$39 a day to up to several hundred dollars a day in high season. See Attachment B, Page 1. The agreed upon \$95/day rate in the Lowden lease falls well within this fair market value range, especially considering that the RV was not new, but instead almost a decade old and in need of improvements.

In advance of the execution of the formal Lease agreement, Giudici allowed Lowden for Senate to use the RV, and reported an in-kind contribution in advance for the fair market value of current usage, and then as pre-payment for future use. Carl Giudici's in-kind contribution of \$2,200 was reported on the Lowden for Senate 2009 Q4 (10/1/09 to 12/31/09) FEC Report. Similarly, Heidi Giudici's in-kind contribution of \$1,000 was reported on the Lowden for Senate 2009 Q4 (10/1/09 to 12/31/09) FEC Report. In addition, Mr. Giudici memorialized the in-kind contribution rate of \$95/day with an In-Kind Report that was submitted to Lowden for Senate on January 26, 2010. Attachment C. On January 28, 2010, the RV was registered with the State of Nevada, and Lowden for Senate paid that \$1,664 registration fee. Attachment D.

On February 18, 2010 and on February 25, 2010, Lowden for Senate made capital improvements to the RV, at a cost of \$1,585.80 (on 2/18/2010) and \$9,436.86 (on 2/25/2010). These capital improvements inure to the benefit of the owner of the RV, and will be retained by the owner of the leased RV (Giudici) and were agreed to be treated as in-kind lease payments for use of the RV. These payments for capital improvements, made to Reno-Sparks RV and Auto Service, were reported on the Lowden for Senate 2010 Q1 (1/1/10 to 3/31/10) FEC Report.

In May, 2010, news reports generated by Lowden for Senate's primary election opponents, as well as Sen. Harry Reid's henchmen at the NSDP, questioned the validity of the Giudici's ownership of the RV. Once Lowden for Senate produced the Lease Agreement which proved that neither Sue Lowden nor Lowden for Senate had an ownership interest in the RV, the fallback attack by the NSDP was to assert that because the Nevada Department of Motor Vehicles ("NVDMV") is not supposed to accept private lease agreements for determining vehicle ownership for Registration and Titling purposes, that the Lowden/Giudici Agreement was not valid. This argument is without legal support. If the news reports are correct that the NVDMV is now claiming that private lease agreements are not valid proof of vehicle ownership for registration and titling purposes, that begs the question of why NVDMV staff accepted a private lease agreement for exactly that purpose in January, 2010. If NVDMV staff made a mistake at that point and should not have accepted the private lease agreement at that point, then the implication would be that the RV was potentially not properly registered or titled, which was

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legal issues beyond the jurisdiction or authority of the Federal Election Commission ("FEC" or "Commission").

On or about May 20, 2010, when news reports quoted NVDMV staff stating that private lease agreements were not valid for Nevada vehicle title and registration purposes, Giudici contacted Lee Brothers RV Leasing in Reno, NV and arranged to sell the RV to Lee Brothers. Lee Brothers purchased the RV from Giudici, and then on May 28, 2010 entered into a fair market value lease agreement with Sue Lowden for US Senate. See Attachment D.

Argument

Left-wing activist (i.e. not a Lowden "supporter") Craig Holman of Public Citizen summarized the issue at hand nicely in the *Las Vegas Review Journal* when he stated that "[i]f this is a legitimate leasing agreement and the candidate is paying fair market value, then this is not a violation of campaign finance laws." Attachment B, Page 2. In fact, Lowden for Senate had a legitimate lease agreement with Giudici, the owner of the RV, and made fair market value payments for use of such RV. To the extent there was any violation of the law or regulations with the Lowden for Senate lease arrangement, the only regulations even potentially violated would be Nevada DMV regulations, and enforcement of those regulations is beyond the jurisdiction of the Commission. Consequently this MUR should be dismissed with no further action taken.

II. MUR 6307

This Complaint provides no evidence of a knowing violation of the Act, and instead references a May 27, 2010 pre-election *Las Vegas Review Journal* article regarding the appearance of a very small amount of general election funds potentially having been accidentally spent by Lowden for Senate prior to the conclusion of the primary election on June 8, 2010. In this article Lowden for Senate campaign manager Robert Uithoven acknowledged that less than \$18,000 in general election funds were accidentally spent prior to the general election. Such funds were not knowingly spent, but instead were a result of a cash-flow accounting error.

Lowden for Senate had a policy in place to ensure that general election funds were kept segregated from primary election funds, and not spent during the primary election, so such funds could be refunded if Lowden did not win the Republican primary. In fact, just weeks after the primary election date, on June 29th, 2010, all general election money raised by Lowden for Senate was returned to the respective donors. See Sue Lowden for US Senate July 15 Quarterly FEC report. Consequently, the accounting error that created the appearance of less than \$18,000 of general election funds having been spent prior to the primary date did not confer any benefit upon Lowden for Senate.

Mrs. Lowden self-funded her campaign with an aggregate total of over \$1.9 million of personal funds, including loans in late May, 2010. In light of such self-funding, and the fact that

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all general election donations were returned to donors within weeks of the primary election, it is clear that any internal accounting error that may have occurred did not confer a benefit of any sort upon Lowden for Senate, and is not worth the Commission's valuable time to pursue.

III. Conclusion

The Commission may find "Reason to Believe" only if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of the Act. See 11 C.F.R. 111.4 (a)(d). In the case of MUN 6295, the Complaint only sets forth potential implications and innuendo, and fails to meet the minimal threshold for the Commission to find "reason to believe," which would entail providing facts which would constitute a violation of the Act. In the case of MUR 6307, the complaint does set forth an allegation that could potentially constitute a violation of the Act, but the circumstances surrounding the allegation lead to the conclusion that Commission should take no action and dismiss these potential ministerial violations based upon prosecutorial discretion.

If you have any questions or concerns regarding these matters, please do not hesitate to contact me directly at (202) 572-8663. Thank you for your consideration in this matter.

Sincerely,



Charles R. Spies
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Enclosures.

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Attachment B
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May 18, 2010
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Nevada Democrats file FEC complaint over Lowden bus

By LAURA MYERS
LAS VEGAS REVIEW-JOURNAL

The Nevada Democratic Party Tuesday filed a complaint with the Federal Election Commission, accusing Republican U.S. Senate candidate Sue Lowden of accepting an illegal donation of a luxury motorhome to travel the state.

The Lowden campaign countered it broke no campaign finance laws because the 2001 RV wasn't donated but is being leased from owner Carl Giudici at "fair market value" and will be returned.

Both Giudici and Lowden are listed on the vehicle title and registration with the Department of Motor Vehicles, which the Democratic Party said shows the expensive RV was given to her. The Lowden campaign, however, has said both names had to be listed in order to obtain insurance.

"Sue Lowden owns this bus," said Bradley Schreyer, an attorney for the Nevada State Democratic Party. "Nevada law specifically states that an owner of a motor vehicle is a person who holds the legal title of a vehicle and whose name appears on the certificate of title. The 'lease' with Mr. Giudici is irrelevant and, frankly, pointless. She is 'leasing' a vehicle she already owns."

Lowden campaign manager Robert Ulthoven accused the Democratic Party and incumbent U.S. Sen. Harry Reid of trying to divert voters' attention in the days before the June 8 primary.

"Harry Reid and his cronies can spend as much time as they would like filing FEC complaints against Republican candidates seeking to defeat him in November," Ulthoven said. "Nevada voters will be filing their own complaints against Harry Reid at the ballot box this November when they throw him out of office. As we have done since the first day of this campaign, the Sue Lowden for U.S. Senate campaign will comply with full transparency with the FEC on any and all matters."

The dispute arose whether Lowden exceeded federal campaign donation limits enacted just days before early voting begins May 22 for the primary. Lowden is the GOP front-runner in a closely fought contest with Sharon Angle and Barry Tarkanian, who are leading a dozen Republicans contending against the GOP nomination and the right to face Reid in the fall general election.

Tarkanian's campaign initially accused Lowden of exceeding the campaign contribution limits after she said on a TV program in Reno that a supporter donated the RV to her.

But the Lowden campaign on Monday said the 2001 Monaco was leased Jan. 12 from the owner. The campaign provided the lease as proof, but removed information about how much Lowden is paying to use the vehicle, saying only that the amount was "fair market value."

A similar new luxury RV could be leased for as low as \$50 a day in winter and up to several hundred dollars a day in the summer high season, according to several Las Vegas rental places.

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Attachment B

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The lease dated Jan. 12 was signed by RV owner Carl Cludici and Uthoven. It was not notarized.

Cludici and his wife, Elsie, also donated "in-kind" contributions for the RV's use that were under the \$2,400-per-person limit for the primary campaign -- \$2,290 from him and \$2,260 from her.

In addition, the Lowden campaign spent more than \$11,000 in "capital improvements" to fix the RV, which could be worth from \$60,000 to \$100,000, depending on its condition.

Craig Holman, a campaign finance expert who isn't aligned with either party or campaign, said the arrangement for using the RV appears suspicious because of the initial in-kind contributions and because of the unusual leasing agreement in which Lowden is also listed on the motorhome title.

"If this is a legitimate leasing agreement and the candidate is paying fair market value, then this is not a violation of campaign finance laws," said Holman of Public Citizen in Washington.

"It is peculiar that the owner would make an in-kind contribution before a leasing arrangement. So I can see how the Democrats would be suspicious," he said. "And if the campaign is being charged less than fair market value, that would be violation."

Once it's filed, the FEC complaint could take months to be resolved -- perhaps after the election.

If federal authorities determine Lowden violated campaign donation limits, she could face a felony charge punishable with up to five years in jail and up to \$1 million in fines, the Democratic Party said.

Contact Laura Myers at lmyers@reviewjournal.com or 702-387-2919.

Find this article at:

<http://www.rvj.com/news/nevada-democrats-plan-fec-filing-over-lowden-bus-64200070.html>

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